

VZCZCXRO6603
PP RUEHAG RUEHROV
DE RUEHCV #0073/01 0182306
ZNY CCCCC ZZH
P 182306Z JAN 08
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 0478
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY
RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS PRIORITY
RUMIAAA/HQ USSOUTHCOM MIAMI FL PRIORITY
RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000073

SIPDIS

SIPDIS

HQSOUTHCOM ALSO FOR POLAD
DEPT PASS TO AID/OTI RPORTER

E.O. 12958: DECL: 11/18/2017
TAGS: [PHUM](#) [PGOV](#) [VE](#)
SUBJECT: JUDGE DENIES AMNESTY MOTION IN SIMONOVIS CASE, 11
DEFENDANTS REMAIN IMPRISONED

REF: A. CARACAS 00006
[1](#)B. 07 CARACAS 02404

CARACAS 00000073 001.2 OF 002

Classified By: POLITICAL COUNSELOR ROBERT DOWNES
FOR REASON 1.4 (D)

[1](#)1. (C) Summary. The judge in the case against former police commissioners Simonovis, Vivas, and Forero and eight other police officers denied January 16 a motion to dismiss charges under President Chavez's December 31 amnesty decree. The ex-commissioners are accused of ordering Caracas police officers to fire on demonstrators during the events of April 2002 that temporarily removed Chavez from office. The judge said ending the trial would prevent the victims' families from seeking justice at a later date. When family members, students, and supporters protested the decision the judge ordered National Guardsmen to clear the courtroom, including expelling Poloff and the DCM from the Salvadoran Embassy. Government-affiliated news sources subsequently named the two diplomats present and questioned their presence at the hearing. The judge's ruling was not surprising given Chavez and Attorney General Luisa Ortega Diaz's public comments that the defendants could not benefit from the amnesty because they are being charged with "crimes against humanity." End Summary.

Amnesty Denied

[1](#)2. (SBU) After a five-hour delay in starting this hearing, Marjorie Calderon, the judge in the Simonovis case, denied the defendants' petition for protection under the December 31 Amnesty Decree promulgated by President Chavez. Calderon argued such a move would leave the victims and their families "doubly unprotected," because it would bar the court from reaching a verdict and determining whether other state actors were involved in the incidents. Calderon added that granting amnesty would hinder the victims' families from seeking justice at a later date. She also referred to Article 4 of the Amnesty Decree which states that those persons accused of "crimes against humanity" are ineligible for the amnesty.

Families, Supporters React

[1](#)3. (SBU) As Calderon read her lengthy decision the mood in the courtroom quickly became tense. Several family members

protested and walked out of the courtroom. Calderon attempted to re-establish order by preventing attendees from exiting the hearing. One of the defense lawyers removed her robe and joined audience members in the back of the courtroom. Student subsequently began chanting "Liberty, Justice" at which time Calderon ordered that they retake their seats or be subject to removal. Shortly afterwards, five National Guardsmen entered the courtroom and expelled the approximately 35 attendees including Poloff and Jose Garcia Prieto, the DCM from the Salvadoran Embassy.

¶4. (C) Pilar Simonovis, the wife and lawyer of Ivan Simonovis, told Poloff January 16 that her husband referred to the trial as a "circus" and will not voluntarily attend any future hearings. (Note: Ivan Simonovis had previously threatened to cease attending the hearings after the first scheduled hearing of the year was canceled because National Guard personnel failed to transport the eight police officers from their holding cells in Caracas to the courthouse in Maracay. End Note). She said that members of her defense team considered resigning from the case to protest Calderon's ruling. The criminal case against the 11 defendants is scheduled to resume January 22.

Defendants Were Optimistic

¶5. (C) Poloff spoke with several of the defendants prior to the hearing, the majority of whom seemed optimistic about the hearing. More than one commented they expected to be cleared of the charges and hoped to rejoin their families that evening. Some mentioned the case against former Miranda state governor Enrique Mendoza, whose amnesty request was initially in limbo but was later accepted, as reason to be hopeful. The defense team, however, was more cautious and acknowledged the possibility that the motion might be denied

CARACAS 00000073 002.2 OF 002

for political reasons.

Diplomatic Observers' Presence Questioned

¶6. (C) Government-affiliated news sources subsequently questioned the presence of Poloff and Garcia Prieto at the hearing. Antonio Molina, the lawyer for the victims' families, was quoted on the radio naming the two diplomats and calling on Foreign Minister Nicolas Maduro to investigate their "suspicious" participation at the day's events. The state news agency, ABN, later reported the same incident on their website. Garcia Prieto told Poloff January 16 he received a threatening phone call from a person claiming to have heard on the radio that the diplomats insulted Calderon after the hearing; a claim that was not true. (Note: The defense team personally invited diplomats from the Embassy of El Salvador in Venezuela to attend the hearing. The ex-commissioners Vivas and Forero temporarily sought asylum at the Salvadoran mission in 2004. End Note).

Chavez and Attorney General Weigh In

¶7. (SBU) Calderon's ruling was expected given that both President Chavez and Attorney General Luisa Ortega Diaz previously announced the accused could not benefit from the amnesty. On January 11, two days after the defense team petitioned the court to grant amnesty, President Chavez opined on the case during his state-of-the-union address to the National Assembly. Chavez directed his remarks at the NGO community and the Catholic Church who have criticized him for not extending the amnesty to include all political prisoners saying, "What do they want me to do? Pardon assassins and criminals? No. They cannot benefit from the

amnesty." Chavez subsequently lashed out against Cardinal Jorge Urosa Sabino for his outspoken defense of "certain gentlemen" (the defendants) saying that if he pardoned them he (Chavez) "should be sent to jail (or) be deposed as president." On several occasions since the decree was enacted, Ortega Diaz has said that the 11 defendants are not eligible for the amnesty because they are accused of "crimes against humanity."

Comment

¶8. (C) Calderon's decision highlights the lack of judicial independence in Venezuela. Given the recent public statements made by Chavez and Ortega Diaz regarding the case it was highly improbable that Calderon would rule in the defendants' favor even though the Amnesty Decree dictates that the power to grant amnesty lies with the presiding judge. The government's interest in keeping the case open fuels long-standing fears that Calderon will deliver a pre-cooked verdict.

DUDDY